IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 247 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHMAD AHEMAD MANJARA & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR EE SAIYED for Appellant(s) : 1 - 2.
MR PD BHATTE, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/11/2007

ORAL JUDGMENT

1. This appeal has been filed by the original accused challenging a judgement and order dated 27.2.1996 passed by learned Additional Sessions

Judge, Surat.

2. The appellant original accused in a criminal case No.68/1993, are charged with offences punishable under Section 3(1)(10) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act (here-in-after referred to as “the Atrocities Act) as well as Sections 323, 504, 506(2) read with Section 114 of the Indian Penal Code.

3. Broadly stated, it was the case of the prosecution that on 5.7.1992 while wife of the complainant was trying to fill water from a common village Tap, the appellants herein quarreled with her, insulted her in the name of her community(being belonging to Schedule Caste) and also beat her with fist and kick blows thereby committing above-mentioned offences. Learned trial Judge though was pleased to acquit the appellants of the offences punishable under Section 504, found that the appellants had committed offences punishable under Sections 323, 506(2) of the Indian Penal Code as well as Section 3(1)(10)of the Atrocities Act. Learned Judge was pleased to impose simple imprisonment of six months for offence punishable under Section 323 of the Indian Penal Code and three years each for offences punishable under Section 506(2) of the Indian Penal Code and Section 3(1)(10) of the Atrocities Act. It is this judgement

which is under challenge in this appeal.

4. It is not in dispute that the complainant belongs to Schedule Caste community. A certificate in this regard was also produced before the trial Court. However, it is also not in dispute that wife of the complainant by birth was not a member of Schedule Caste community. It is the case of the prosecution that though wife of the complainant was Muslim by religion, converted herself and married to the complainant. It is significantly not in dispute that the assault verbal as well as physical allegedly have been committed by the appellants was on the wife of the complainant and not on the complainant himself. Deposition of complainant-PW1 Madhubhai Nathabhai Joshi as well as his wife Madhuben Madhubhai-PW2 would unequivocally establish this fact.

5. In this case, however, prosecution had not produced any material to show the legal marriage between the complainant and PW2. Version of PW2 was also not established. PW2 in her cross examination stated that she got married to the complainant through a Court marriage. She however, admitted that by birth she was Muslim, however, after marriage she became Harijan. From the undisputed evidence on record, it would appear that PW2 Madhuben was Muslim by birth. Prosecution has thereafter, not produced any

evidence on record to suggest as to how she become a member of Schedule Caste. As already noted, no proof of marriage with the complainant was brought on record. Her conversion was also not duly established. In that view of the matter, appellants could not have been convicted for the offences punishable under the Atrocities Act qua Madhuben PW2. The conviction of the appellants under Section 3(1)(10) of the Atrocities Act, therefore, cannot be sustained.

6. Insofar as physical assault to Madhuben PW2 is concerned, though learned advocate Shri Saiyed for the appellants vehemently argued, I am unable to concur with his submissions that there was no evidence to bring home this charge.

7. PW1 Madhubhai-complainant as well as PW2 Madhuben were eye witnesses who had deposed that on the date of incident both the appellants physically assaulted Madhuben PW2. They had given fist and kick blows. This was corroborated by the medical evidence of Dr. Ranjithbhai Raval PW5 at exh.19.

8. Considering the oral evidence of PW1 and PW2 and evidence of Dr. Ranjithbhai PW5, it is not possible to hold that trial Court committed any error in convicting the appellants under Sections 323 and 506(2) of the Indian Penal Code. Though Yakubbhai Yusufbhai PW4 turned

hostile and did not support prosecution case, in view of other evidence discussed above, findings of the trial Court are not required to be disturbed.

9. Question of sentence however, remains to be discussed. In my view, learned Judge was extremely harsh in awarding three years of imprisonment to the appellants under Section 506(2) of Indian Penal Code. The counsel for the appellants submitted that appellant no.1 was at the relevant time aged about 66 years and currently he would therefore, above 76 years of age. Appellant no.2 is a lady. She is stated to have got remarried and is settled with her family. Injuries suffered by Madhuben PW2 were also superficial. The incident took place in the year 1993. 14 long years thereafter to send the appellants to imprisonment to serve out rest of the sentence which even otherwise I find extremely harsh, would not be under very circumstances, fair.

10. Considering the special facts of the case, therefore, I find that both the appellants are required to be granted benefit of probation. It may be noted that since I have already held that conviction under Section 3(1)(10) of the Atrocities Act is not sustainable, the appellants are entitled to the benefit of probation.

11. In the present case, therefore, in the totality of facts and circumstances of the case, though conviction under Section 323 and 506(2) read with Section 114 of the Indian Penal Code is confirmed, the appellants are given benefit of probation. They shall therefore, instead of serving out the sentence are let off with a warning.

12. With these directions, appeal succeeds in part. Bail bond stands cancelled.

(Akil Kureshi,J.)

(raghu)